

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

In re: RAILYARD COMPANY, LLC,

Bankruptcy Case No. 15-12386-t7

STEVE DURAN and
RICK JARAMILLO,

Appellants,

v.

No. 1:20-cv-01172-KWR-LF

CRAIG DILL, Trustee, and
THOROFARE ASSET BASED LENDING FUND III, L.P.,

Appellees.

MEMORANDUM OPINION AND ORDER
DENYING MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

THIS MATTER comes before the Court on Appellant Rick Jaramillo's Affidavit to Accompany Motion for Permission to Appeal in Forma Pauperis, Doc. 28, filed March 17, 2022.

The Court dismissed this case with prejudice and entered Final Judgment on February 1, 2022. *See* Order Adopting Magistrate Judge's Proposed Findings and Recommended Disposition at 6-7, Doc. 23 (stating "in this case, the relief sought by Mr. Jaramillo—to vacate all orders and decisions from Judge Thuma and order Judge Thuma to excuse himself—cannot be ordered by this Court because there is no longer a case or controversy to reverse or remand ... The case is simply over, and this Court no longer has jurisdiction") and Final Judgment, Doc. 24; *see also* Amended Order Adopting Magistrate Judge's Proposed Findings and Recommended Disposition, Doc. 25, filed February 1, 2022 (same). Appellant Rick Jaramillo filed a Notice of Appeal "from the Final Order of the District Court for the District of New Mexico, entered in this case on January

31st, 2022." Doc. 26, filed March 7, 2022. Appellant Rick Jaramillo now seeks leave to appeal *in forma pauperis*.

"In order to succeed on [a motion for leave to proceed on appeal without prepayment of costs or fees], an appellant must show a financial inability to pay the required filing fees and the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal." *DeBardleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991). "An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). "The Supreme Court has held that good faith is to be judged by an objective standard, for review of any issue 'not frivolous.'" *Spearman v. Collins*, 500 Fed.Appx. 742, 743 (10th Cir. 2012) (citing *Coppedge v. United States*, 369 U.S. 438, 445 (1962)). "An appeal is frivolous when the result is obvious, or the appellant's arguments of error are wholly without merit." *Id.*; *see also Thompson v. Gibson*, 289 F.3d 1218, 1222 (10th Cir. 2002) ("an appeal is frivolous if it lacks an arguable basis in either law or fact").

Appellant Rick Jaramillo has shown a financial inability to pay the required filing fees but has not shown the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal. Appellant states:

My issues on appeal are: Under 28 U.S.C. § 455 Disqualification of Justice, Judge, or Magistrate Judge, in section (b)(2) the presiding Judge Thuma in Bankruptcy Court practiced law and served with Appellees attorney Thomas Walker and the firm/represented Railyard Co. LLC and gave advice & reviewed the subject matter documents.

Affidavit at 1. Appellant Rick Jaramillo has not set forth any argument of error regarding the Court's dismissal of this case.

The Court concludes that Appellant Rick Jaramillo's appeal is not taken in good faith and that his request for leave to appeal *in forma pauperis* must be denied because he has not identified

"the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal." *DeBardleben*, 937 F.2d at 505.

IT IS ORDERED that Appellant Rick Jaramillo's Affidavit to Accompany Motion for Permission to Appeal in Forma Pauperis, Doc. 28, filed March 17, 2022, is **DENIED**.

THE COURT CERTIFIES that Appellant Rick Jaramillo's appeal is not taken in good faith.

IT IS SO ORDERED.



KEA W. RIGGS
UNITED STATES DISTRICT JUDGE